

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re AMERICAN REALTY CAPITAL PROPERTIES, INC. LITIGATION	:	Civil Action No. 1:15-mc-00040-AKH
	:	
	:	<u>CLASS ACTION</u>

This Document Relates To:

ALL ACTIONS.

ARCHER CAPITAL MASTER FUND, L.P.,
et al.,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES,
INC., *et al.*,

Defendants.

Civil Action No.: 1:16-cv-05471-AKH

ATLAS MASTER FUND, LTD., *et al.*,

Plaintiffs,

v.

AMERICAN REALTY CAPITAL
PROPERTIES,
INC., *et al.*,

Defendants.

Civil Action No.: 1:16-cv-05475-AKH

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BLACKROCK ACS US EQUITY	:	
TRACKER FUND, <i>et al.</i> ,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.: 1:15-cv-08464-AKH
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., <i>et al.</i> ,	:	
	:	
	:	
Defendants.	:	
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CLEARLINE CAPITAL PARTNERS LP, <i>et</i>	:	
<i>al.</i> ,	:	
	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.: 1:15-cv-08467-AKH
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., <i>et al.</i> ,	:	
	:	
	:	
Defendants.	:	
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HG VORA SPECIAL OPPORTUNITIES	:	
MASTER FUND, LTD.,	:	
	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No.: 1:15-cv-04107-AKH
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., <i>et al.</i> ,	:	
	:	
	:	
Defendants.	:	
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JET CAPITAL MASTER FUND, L.P., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.: 1:15-cv-00307-AKH
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	
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PENTWATER EQUITY OPPORTUNITIES	:	
MASTER FUND LTD., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.: 1:15-cv-08510-AKH
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	
<hr/>	X	
PIMCO FUNDS: PIMCO DIVERSIFIED	:	
INCOME FUND, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.: 1:15-cv-08466-AKH
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	
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TWIN SECURITIES, INC., <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No.: 1:15-cv-01291-AKH
	:	
AMERICAN REALTY CAPITAL	:	
PROPERTIES, INC., <i>et al.</i> ,	:	
	:	
Defendants.	:	
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JOINT RULE 26(f) REPORT AND [PROPOSED] CASE MANAGEMENT PLAN¹

¹ This Report does not apply to *Witchko v. Schorsch, et al.*, No. 1:15-cv-06043-AKH (the “Derivative Action”). The parties in the Derivative Action intend to address discovery issues with the Court at the case management conference on September 8, 2016.

The parties in the above-captioned actions jointly submit the following Federal Rule of Civil Procedure 26(f) Report and accompanying [Proposed] Civil Case Management Plan. Where the parties differ in their positions, they have set forth their respective proposals.

I. THE PARTIES

A. Class Action

The Court-appointed Lead Plaintiff in *In re American Realty Capital Properties, Inc. Litigation*, 1:15-mc-00040-AKH (the “Class Action”), is Teachers Insurance and Annuity Association of America, College Retirement Equities Fund, TIAA-CREF Equity Index Fund, TIAA-CREF Real Estate Securities Fund, TIAA-CREF Large Cap Value Index Fund, TIAA-CREF Small Cap Blend Index Fund, TIAA-CREF Life Real Estate Securities Fund, TIAA-CREF Life Equity Index Fund, and TIAA-CREF Bond Index Fund (collectively, “TIAA”).

Defendants are:

- American Realty Capital Properties, Inc., n/k/a Vereit, Inc. (“ARCP” or the “Company”), ARC Properties Operating Partnership L.P. (“ARCP OP”), AR Capital LLC (“AR Capital”), and ARC Properties Advisors LLC;
- Individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, Edward M. Weil, Peter M. Budko, Brian D. Jones, Lisa P. McAlister, Lisa E. Beeson, William M. Kahane, Leslie D. Michelson, William G. Stanley, Edward G. Rendell, Scott J. Bowman, Thomas A. Andruskevich, Scott P. Sealy, Sr., and Bruce D. Frank;
- ARCP’s former external auditor Grant Thornton LLP (“Grant Thornton”); and
- Underwriter Defendants J.P. Morgan Securities LLC, Citigroup Global Markets Inc., Barclays Capital Inc., BMO Capital Markets Corp., KeyBanc Capital Markets Inc., JMP Securities LLC, Ladenburg Thalmann & Co. Inc., Realty Capital Securities, LLC, Credit Suisse Securities (USA) LLC, Morgan Stanley & Co. LLC, Wells Fargo Securities, LLC, Capital One Securities, Inc., Merrill, Lynch, Pierce, Fenner & Smith, Inc., Deutsche Bank Securities Inc., Robert W. Baird & Co., Janney Montgomery Scott, LLC, Mizuho Securities USA Inc., PNC Capital Markets LLC, Piper Jaffray & Co., and RBS Securities Inc.

B. Opt-Out Actions

The following actions are collectively referred to as the “Opt-Out Actions.”

1. Archer Action

Plaintiffs in *Archer Capital Master Fund, L.P., et al v. American Realty Capital Properties, Inc., et al.*, No. 1:16-cv-05471-AKH (the “Archer Action”), are Archer Capital Master Fund, L.P., Hastings Master Fund, L.P., and Archer Crossbow Master Fund, L.P. Defendants are ARCP and individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, Edward M. Weil, Peter M. Budko, Brian D. Jones, Lisa P. McAlister, Lisa E. Beeson, William M. Kahane, Leslie D. Michelson, Edward G. Rendell, and Scott J. Bowman.

2. Atlas Action

Plaintiffs in *Atlas Master Fund, Ltd., et al. v. American Realty Capital Properties, Inc., et al.*, No. 1:16-cv-05475-AKH (the “Atlas Action”), are Atlas Master Fund, Ltd., Atlas Leveraged Master Fund, Ltd., and Lyxor/Balyasny Atlas Enhanced Fund, Ltd. Defendants are ARCP and individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, and Lisa P. McAlister.

3. BlackRock Action

Plaintiffs in *BlackRock ACS US Equity Tracker Fund, et al. v. American Realty Capital Properties, Inc., et al.*, No. 15-cv-08464-AKH (the “BlackRock Action”), are certain investment funds and accounts that are managed and/or advised by BlackRock, Inc. and its advisory affiliates. Defendants are ARCP, ARCP OP, AR Capital, and individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, Lisa P. McAlister, and Lisa E. Beeson.

4. Clearline Action

Plaintiffs in *Clearline Capital Partners LP, et al. v. American Realty Capital Properties, Inc., et al.*, No. 15-cv-08467 (the “Clearline Action”), are Clearline Capital Partners LP and Clearline Capital Partners Master Fund, LP. Defendants are ARCP, ARCP OP, AR Capital, and

individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, Lisa P. McAlister, and Lisa E. Beeson.

5. HG Vora Action

Plaintiff in *HG Vora Special Opportunities Master Fund, LTD. v. American Realty Capital Properties, Inc. et al.*, No. 15-cv-04107-AKH (the “HG Vora Action”), is HG Vora Special Opportunities Master Fund, Ltd. Defendants are ARCP, ARCP OP, AR Capital, individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, Edward M. Weil, Peter M. Budko, Brian D. Jones, Lisa P. McAlister, Lisa E. Beeson, William M. Kahane, Leslie D. Michelson, William G. Stanley, Edward G. Rendell, Scott J. Bowman, Thomas A. Andruskevich, and Scott P. Sealy, Sr., and auditor defendant Grant Thornton.

6. Jet Capital Action

Plaintiffs in *Jet Capital Master Fund, L.P., et al. v. American Realty Capital Properties, Inc., et al.*, No. 1:15-cv-00307-AKH (the “Jet Capital Action”), are Jet Capital Master Fund, L.P., J. Goldman Master Fund, L.P., LumX Jet Fund Limited, and Walleye Trading, LLC. Defendants are ARCP and individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, and Lisa P. McAlister.

7. Pentwater Action

Plaintiffs in *Pentwater Equity Opportunities Master Fund Ltd., et al. v. American Realty Capital Properties, Inc., et al.*, No. 15-cv-08510-AKH (the “Pentwater Action”), are Pentwater Equity Opportunities Master Fund Ltd., Pentwater Merger Arbitrage Master Fund Ltd., PWCM Master Fund Ltd., and Oceana Master Fund Ltd. Defendants are ARCP, ARCP OP, AR Capital, and individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, Lisa P. McAlister, and Lisa E. Beeson.

8. PIMCO Action

Plaintiffs in *PIMCO Funds: PIMCO Diversified Income Fund, et al. v. American Realty Capital Properties, Inc., et al.*, No. 15-cv-08466-AKH (the “PIMCO Action”), are certain investment funds that are managed and/or advised by Pacific Investment Management Company LLC. Defendants are ARCP, ARCP OP, AR Capital, and individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, Lisa P. McAlister, and Lisa E. Beeson.

9. Twin Securities Action

Plaintiffs in *Twin Securities, Inc. et al. v. American Realty Capital Properties, Inc. et al.*, No. 15-cv-01291-AKH (the “Twin Securities Action”), are Twin Securities, Inc., Twin Master Fund, Ltd., Twin Opportunities Fund, LP, P Twin, Ltd., and HFR ED Twin Securities Master Trust. Defendants are ARCP, ARCP OP, AR Capital, individual Defendants Nicholas S. Schorsch, David S. Kay, Brian S. Block, Lisa P. McAlister, Lisa E. Beeson, Edward M. Weil, Peter M. Budko, Brian D. Jones, William M. Kahane, Leslie D. Michelson, William G. Stanley, Edward G. Rendell, Scott J. Bowman, Thomas A. Andruskevich, and Scott P. Sealy, Sr., and auditor defendant Grant Thornton.

II. STATUS OF ACTIONS

The initial putative class action complaint was filed on October 30, 2014, and individual complaints in the Jet Capital, BlackRock, PIMCO, Twin Securities, HG Vora, Clearline, and Pentwater Actions were filed between January 15, 2015, and October 28, 2015. On February 13, 2015, the Court consolidated the putative class actions and appointed TIAA as Lead Plaintiff. On November 6, 2015, the Court directed Lead Plaintiff to replead its claims; the Court also denied defendants’ motions to dismiss in the Jet Capital Action. Plaintiffs in the BlackRock, PIMCO, Twin Securities, HG Vora, Clearline, and Pentwater Actions agreed that after the resolution of all further motions to dismiss pursuant to Rule 12(b) in the Class Action, they would file amended complaints

in conformity with the sustained claims, defendants, and alleged misrepresentations in the Class Action or Jet Capital Action. Between December 11 and December 18, 2015, defendants filed answers to the complaint in the Jet Capital Action.

On December 18, 2015, Lead Plaintiff filed a Second Amended Class Action Complaint (the “Class Complaint”). On June 1, 2016, the Court denied in part and granted in part Defendants’ motions to dismiss the Class Complaint; directed Lead Plaintiff in the Class Action to file any amended complaint by June 10, 2016; directed plaintiffs in the BlackRock, PIMCO, Twin Securities, HG Vora, Clearline, and Pentwater Actions to file amended complaints by June 17, 2016; and ordered the parties to recommend a case management plan at a conference currently scheduled for September 8, 2016. On June 8, 2016, Lead Plaintiff in the Class Action notified the Court that it would not be amending its claims and did not intend to file a Third Amended Complaint. On June 17, 2016, plaintiffs in the BlackRock, PIMCO, Twin Securities, HG Vora, Clearline, and Pentwater Actions filed amended complaints. Defendants timely filed their Answers in the Class Action and the BlackRock, PIMCO, Twin Securities, HG Vora, Clearline, and Pentwater Actions on July 29, 2016.²

Pursuant to the Private Securities Litigation Reform Act, discovery in these actions was stayed until the Court’s June 1, 2016 denial of Defendants’ motions to dismiss. The parties conducted their initial Rule 26(f) telephonic conference on August 9, 2016, with subsequent telephonic conferences on August 17, 2016 and August 30, 2016.

² Plaintiffs in the Archer and Atlas Actions filed complaints on July 8, 2016. The parties in those actions are negotiating, and plan to submit to the Court in the near future, a stipulation and proposed order setting forth the time for defendants to answer or move to dismiss the complaints.

III. [PROPOSED] CASE MANAGEMENT PLAN

A. The Case to Be Tried to a Jury

Plaintiffs have requested a jury trial. To the extent that there are any claims for equitable relief in these actions, the parties reserve the right to argue at a later date whether some or all of such claims should be tried to a jury.

B. Non-Expert Discovery

1. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. All non-expert discovery is to be completed by **SEPTEMBER 1, 2017**, which date shall not be adjourned except upon a showing of good cause and further order of the Court. Interim deadlines for specific discovery activities may be extended by the parties on consent without application to the Court, provided the parties believe that they can still meet the discovery completion date ordered by the Court.

(a) The parties shall list the contemplated discovery activities and anticipated completion dates in Attachment A, annexed hereto.

(b) The parties agree that discovery will be needed regarding, *inter alia*, the following issues: (i) whether the federal securities laws were violated by Defendants' acts as alleged in the Complaints; (ii) whether statements made by Defendants during the Class Period misrepresented and/or omitted material facts about ARCP and its business; (iii) whether the price of ARCP securities was artificially inflated during the Class Period; (iv) the extent of injuries, if any, sustained by members of the Class and plaintiffs in the Opt-Out Actions and the appropriate measure of damages, if any, and (v) whether the Class Action is appropriately brought as a class action.

(c) As discussed herein, the parties have discussed and will continue to discuss ways to ensure discovery in these actions will be efficient. In an effort to increase efficiency, Plaintiffs shall serve omnibus document requests covering common factual issues. Documents produced in response to any omnibus document requests will be maintained by Plaintiffs in all actions in a single document depository. Any individualized issues will be the subject of separate document requests.

(d) The parties will meet and confer to develop a framework and protocol for discovery of electronically stored information (“ESI”), to be submitted for the Court’s approval.

(e) The parties will meet and confer to attempt to reach agreement on a protective order, to be submitted for the Court’s approval, governing disclosure and use by the parties of all documents and information disclosed in discovery.

(i) **Plaintiffs’ Position:** Approval by the Court of a protective order does not relieve any party from their obligation to provide initial disclosures or produce documents in response to any request for discovery. Any document or information produced or provided prior to entry of a protective order will be for “Attorney’s eyes only” and kept confidential until the entry of a protective order, when such document or information will be treated in accordance with that order. In any event, the parties shall submit a proposed protective order to the Court by September 20, 2016, in advance of the parties agreed upon disclosure deadline.

(ii) **Defendants’ Position:** The parties shall not be required to produce any documents in response to any request for discovery prior to the entry of a protective order. The parties will proceed expeditiously to ensure that a proposed protective order is submitted to the Court at the earliest practical date.

C. For all causes of action seeking monetary damages, each party shall identify and quantify in Attachment B, annexed hereto, each component of damages alleged; or, if not known, specify and indicate by what date Attachment B shall be filed providing such information.

D. Motions, Settlement, Second Pre-Trial Conference, and Expert Discovery:

1. Following the substantial completion of non-expert fact discovery by September 1, 2017 as set forth in Attachment A hereto, the parties shall meet with the Court for a further Case Management Conference to discuss the status of the case, the prospects of settlement and whether alternative disputes-resolution procedures should be utilized, the need for and a schedule regarding experts and expert discovery and the filing of dispositive motions, a discovery bar date, and any other issue counsel or the Court wish to discuss. The Case Management Conference will be held on _____, at _____.m. (The Court will set this date at the Initial Case Management Conference.)

E. Any request for relief from any date provided in this Case Management Plan shall conform to the Court's Individual Rules, and include an order, showing consents and disagreements of all counsel, setting out all dates that are likely to be affected by the granting of the relief requested, and proposed modified dates. Unless and until the Court approves the proposed order, the dates provided in this Plan shall be binding.

F. A final pre-trial conference will be held on a date to be set, as close as possible to the date that trial is expected to begin. The parties, three days before said meeting, shall submit their pre-trial order, conforming to the Court's Individual

Rules and, at the conference, deliver their exhibit books containing all exhibits the parties actually intend to offer at the trial.

G. Pre-Trial Motions:

Applications for adjournments and for discovery or procedural rulings will reflect or contain the positions of all parties, and otherwise conform to my Individual Rule 1(D). Unless the Court rules otherwise, motions shall not modify or delay the conduct of discovery or the schedules provided in this Case Management Plan.

DATED: September 6, 2016

Respectfully submitted,

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ATTACHMENT A

The Parties are to list the discovery activities (*i.e.*, production of documents, number of depositions, requests to admit, interrogatories) and anticipated completion dates:

	DISCOVERY ACTIVITIES	COMPLETION DATE		
1.	Initial Disclosures	September 23, 2016		
2.	Party Document Requests and Production	Plaintiffs' Position: The parties shall produce documents on a rolling basis in response to any document requests. The production of non-privileged responsive documents to document requests served by September 12, 2016 shall be completed in accordance with the requirements of Federal Rules of Civil Procedure 26 and 34 by December 15, 2016. Interim deadlines for specific discovery activities may be extended by the parties on consent without application to the Court, provided the parties believe that they can still meet the discovery completion date ordered by the Court. The parties agree that they may serve additional document requests after September 12,	ARCP/Grant Thornton/ Underwriters' Position: The parties shall produce documents on a rolling basis in response to any document requests. The production of non-privileged responsive documents to document requests served by September 12, 2016 to which there is no objection shall be substantially completed by December 15, 2016. Interim deadlines for specific discovery activities may be extended by the parties on consent without application to the Court, provided the parties believe that they can still meet the discovery completion date ordered by the Court. The parties agree that they may serve additional document requests after September 12, 2016. The parties agree that document	AR Capital's Position: The parties shall produce documents on a rolling basis in response to any document requests. The production of non-privileged responsive documents to document requests served by December 12, 2016 to which there is no objection shall be substantially completed by April 10, 2017. Interim deadlines for specific discovery activities may be extended by the parties on consent without application to the Court, provided the parties believe that they can still meet the discovery completion date ordered by the Court. The parties agree that they may serve additional document requests after December 12, 2016. The parties agree that document requests after

	DISCOVERY ACTIVITIES	COMPLETION DATE		
		2016. The parties agree that document requests after September 12, 2016 shall be limited to specific, targeted requests made in good faith as a result of information not known or available to the requesting party before September 12, 2016. Based on their current knowledge and information, the parties believe September 1, 2017 is a reasonable cut-off for all non-expert discovery.	requests after September 12, 2016 shall be limited to specific, targeted requests made in good faith as a result of information not known or available to the requesting party before September 12, 2016. Based on their current knowledge and information, the parties believe September 1, 2017 is a reasonable cut-off for all non-expert discovery.	December 12, 2016 shall be limited to specific, targeted requests made in good faith as a result of information not known or available to the requesting party before December 12, 2016. Based on their current knowledge and information, the parties believe September 1, 2017 is a reasonable cut-off for all non-expert discovery.
3.	Third Party Subpoenas and Production	Subpoenas will be served on a rolling basis. Non-party discovery to be completed by September 1, 2017.		
4.	Non-Expert Depositions	After Plaintiffs review Defendants' Answers, initial disclosures and documents responsive to Plaintiffs' document requests (e.g., organizational charts), and after Defendants review Plaintiffs' initial disclosures and documents responsive to Defendants' document requests, the parties believe that they will be in a better position to propose a reasonable number of depositions to be taken in this action. Accordingly, the parties propose that after [December 15, 2016 / April 10, 2017], they meet and confer to attempt to reach agreement on a limit on the number of depositions, and that they raise the matter with the Court if they are unable to reach agreement.		
5.	Requests to Admit	All Requests to Admit shall be served by July 31, 2017. All responses to Requests to Admit are due 30 days after service.		
6.	Number of Depositions, Requests to Admit	Plaintiffs believe that the limitations imposed by the Federal Rules of Civil Procedure on the number of depositions, requests to admit and interrogatories should be exceeded. The parties shall discuss the issue in good faith. In the event the parties are unable to agree, they shall submit their		

	DISCOVERY ACTIVITIES	COMPLETION DATE
	and Interrogatories	various proposals to the Court in a jointly composed letter.
7.	Class Certification	<p>Plaintiffs' Proposal:</p> <ul style="list-style-type: none"> • Opening motion and documents sufficient to show transactions in ARCP publicly traded securities due November 18, 2016. • Opposition briefs due January 13, 2017. • Reply briefs due February 17, 2017. <p>Defendants' Proposal:</p> <ul style="list-style-type: none"> • Plaintiffs' Motion, Identification of Expert(s), and Expert Report(s) (if any) due January 13, 2017. • Deposition(s) of Plaintiffs' Class Certification Expert(s) (if any) due February 10, 2017. • Defendants' Opposition Brief, Identification of Expert(s), and Expert Report(s) (if any) due March 17, 2017. • Deposition(s) of Defendants' Class Certification Expert(s) (if any) due April 14, 2017. • Plaintiffs' Reply Brief due April 28, 2017.

ATTACHMENT B

For all causes of action seeking monetary damages, each party shall identify and quantify each component of damages alleged:

1. **PLAINTIFFS' CLAIMS:**

Class wide damages are subject to expert analysis and shall be calculated by an expert and disclosed consistent with Fed. R. Civ. P. 26 after sufficient discovery. Subject to subsequent expert analysis and discovery, the named plaintiffs shall provide a computation of damages consistent with Fed. R. Civ. P. 26(a)(iii).

Damages in the Opt-Out Actions are also subject to expert analysis and shall be calculated by an expert and disclosed consistent with Fed. R. Civ. P. 26 after sufficient discovery. Subject to subsequent expert analysis and discovery, the plaintiffs in the Opt-Out Actions shall provide a computation of damages consistent with Fed. R. Civ. P. 26(a)(iii).

2. **COUNTERCLAIMS AND CROSS-CLAIMS:**

There are no counterclaims or cross-claims currently pending.

3. **THIRD PARTY CLAIMS:**

There are no third-party claims currently pending.

CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2016, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September 6, 2016.

s/ Darren J. Robbins

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